

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

NOVEL DRUG SOLUTIONS, LLC, and
EYE CARE NORTHWEST, PA,

Plaintiffs,

v.

HARROW HEALTH, INC.,

Defendant.

Civil Action No. 18-0539-MN

HARROW HEALTH, INC.,

Defendant/Counterclaim Plaintiff,

v.

NOVEL DRUG SOLUTIONS, LLC and
EYE CARE NORTHWEST, PA,

Plaintiffs/Counterclaim Defendants

and

DR. JEFFREY LIEGNER and
J. SCOTT KAROLCHYK,

Counterclaim Defendants

**DEFENDANT HARROW HEALTH INC.'S MOTION FOR LEAVE TO FILE
SUPPLEMENTAL REPLY BRIEF IN SUPPORT OF DEFENDANT'S RULE 12(b)(6)
MOTION TO DISMISS OR IN THE ALTERNATIVE TO STRIKE**

Plaintiffs were granted leave to amend their Complaint and their unjust enrichment claim to a breach of contract claim. (D.I. 277) (“the Third Amended/Supplemental Complaint”). In lieu of answering the Third Amended/Supplemental Complaint, on June 25, 2020 Defendant Harrow Health Inc. (“Harrow”) filed a Motion pursuant to Federal Rule of Civil Procedure 12(b)(6) to dismiss the claim, or in the alternative to strike the claim (“Motion to Dismiss”). (D.I. 230). Plaintiffs responded with their Answer in Opposition to the motion on July 9, 2020 (D.I. 236), and on July 16, 2020 Harrow filed its Reply (D.I. 240).

Harrow now moves this Court for leave to file a supplemental reply brief. A copy of the supplemental reply brief that Harrow seeks to file is attached as Exhibit A. Local Rule 7.1.2 requires Harrow to obtain Court approval to file a supplemental reply brief. “A Court may grant leave to file a [supplemental reply] if it responds to new evidence, facts or arguments.” *St. Clair Intellectual Prop. Consultants v. Samsung Elecs. Co. Ltd.*, 291 F.R.D. 75 (D. Del. 2013).

In their Answering to the Motion to Dismiss, Plaintiffs made representations concerning their damages expert, Michael Napolitano’s report and opinion. On July 30, 2020 Harrow deposed Mr. Napolitano whose testimony contradicted Plaintiffs’ Answer to the Motion to Dismiss.

In view of the new evidence elicited at Mr. Napolitano’s deposition contradicting representations Plaintiffs made in their Answer to the Motion to Dismiss, Harrow respectfully requests that this Court grant Harrow leave to file a supplemental reply brief in the form attached for the reasons given above.

August 7, 2020

DEVLIN LAW FIRM LLC

/s/ James. M. Lennon

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Attorneys for Harrow, Inc.

SO ORDERED this _____ day of August, 2020.

United States District Court Judge

RULE 7.1.1 CERTIFICATE

The undersigned attorney hereby certifies that counsel for movants have made a reasonable effort to reach agreement with the opposing attorneys on the matters set forth in the motion, but the opposing attorneys oppose the motion.

August 7, 2020

/s/ James M. Lennon
James M. Lennon

CERTIFICATE OF SERVICE

I hereby certify that on August 7, 2020, I electronically filed the above document(s) with the Clerk of Court using CM/ECF, which will send electronic notification of such filing(s) to all registered counsel.

/s/ James M. Lennon
James M. Lennon